

India - The Emergency of June 26, 1975: The Unkindest Cut

Tuesday 26 June 2007, by [SACHAR Rajindar](#) (Date first published: 26 June 2007).

Today happens to be the 32nd anniversary of the proclamation of the Emergency - an occasion to hang our heads in shame over the violation of human rights during that 19-month period. June 26 is an embarrassment to India for another reason.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) came into force on June 26, 1987, but India is yet to ratify it.

The fact that various political forces have come to power at the Centre over this period shows the general unconcern for human rights.

Torture is defined under Article 1 of UNCAT to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person with a view to obtaining information or a confession.

Article 2 (2), of UNCAT mandates that "*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture*".

Article 17 provides for the establishment of a committee against torture.

Each ratifying state is to submit its report to the committee, which is authorised to make any comments in its annual report and give suggestions.

The Supreme Court said in D K Basu (1997) that custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law. "Custodial torture" is a naked violation of human dignity.

How do we explain the indifference of Indian

political parties to human rights? The police and security forces have convinced their political masters that if UNCAT were to be ratified, they cannot resort to torture, which would impede crime detection.

This approach is seriously flawed. Torture and death in custody have assumed alarming proportions as to affect credibility of the rule of law and the administration of the criminal justice system.

While ratification of UNCAT will not automatically abolish the use of torture, a machinery that oversees the infractions of law will have an impact.

In 1976, at the height of terrorism in Northern Ireland, the European Commission of Human Rights ruled that the practice of depriving suspects of sleep constituted torture and inhuman treatment. UK ratified the treaty in 1988.

In 1996, the European Court of Human Rights was confronted with a situation of whether an alleged criminal should be returned by a foreign country to the criminal's own country if he was likely to be tortured as a result. It responded: "*The Court is well aware of the immense difficulties faced by states in modern times in protecting their communities from terrorist violence.*"

However, even in these circumstances, the convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct..."

In 2005, the House of Lords (UK) in a judgment has taken the view that UNCAT represented a universal consensus on international law.

In the context of inhuman treatment at Abu Ghraib prison and Guantanamo Bay, the US could not justify its behaviour by invoking the post 9/11 situation and conceded that the detenus will be governed by the Geneva Convention.

The US had ratified the Convention in 1994.

According to the National Human Rights Commission's 2004-05 annual report, there were 1,493 custodial deaths including 136 deaths in

police custody and 1,357 deaths in judicial custody during 2004-05.

In 2005, the Union government established an inter-ministerial group consisting of the Ministry of External Affairs, Ministry of Home affairs and the Ministry of Law and Justice on the question of early ratification of the UNCAT.

It has not made any recommendations so far. The Centre has reportedly drafted a Bill and views of the NHRC have been sought. But nothing has been made public.

India has also refused to extend an invitation to the special rapporteur on torture who applied for an invitation in 1993. In the neighbourhood, Pakistan, Nepal, China and Sri Lanka had invited the special rapporteur.

Will India change by June 26 next year?

P.S.

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